

is in substantially planar alignment with an upper surface of the roadway structure. Claim 11 recites that the upper surface of the body is substantially planar. Thus, claim 1 is not limited to a substantially planar upper-surface of the body, but rather an upper surface of the body that "is in substantially planar alignment with an upper surface of the roadway structure". Whereas, claim 11 limits the upper surface of the body to a substantially planar upper surface.

With regard to the Section 103(a) rejection, the Examiner asserted that Shaftner discloses the claimed invention except for: (1) the upper surface is in planar alignment with the upper surface of the roadway structure; and (2) the riser provided to adjust the height of the top of the collar body to the height of the roadway structure. For missing element (1), the Examiner relied upon Grosh as disclosing an upper surface of a collar in planar alignment with the upper surface of the roadway structure. For missing element (2), the Examiner relied upon Wiedrich as disclosing risers to make height adjustments. Applicant respectfully traverses the Examiner's Section 103(a) rejection of the claims, for the following reasons.

Shaftner discloses a ramp for a temporarily-elevated utility access hole. As shown in Fig. 2 of the reference, the ramp has a flat lower surface and a sloped upper surface. Shaftner further discloses that the ramp can be molded in different thicknesses and used singly or stacked on top of one another. (Col. 1, lines 50-52).

Grosh discloses an underground, reinforced plastic enclosure 10 that includes a body 15 that is suitable as an enclosure for an underground utility, and a top cap 25 that is secured to the upper portion of the body 15 by means of brackets and bolts as shown in FIG. 2. Top cap 25 has a rectangular configuration and is formed with a central cylindrical opening 26. (Col. 2, lines 41-54; and col. 4, lines 44-46).

Wiedrich discloses a manhole structure 10 comprising a manhole base or cone 12, a

plurality of extension members 14 aligned above the open top end 16 of cone 12, a support frame 18 aligned above the upper most extension member 14, and a manhole cover 20 aligned above the support frame 18. (Col. 5, line 67 – col. 6, line 5).

In contrast, the present invention recited in claim 1, and claims 2-6, 10, and 11, at least by virtue of dependence, recite a combination of elements, including a resilient, replaceable collar having a body with upper and lower surfaces, wherein the upper surface of the body is in substantially planar alignment with an upper surface of a roadway structure; and at least one resilient riser provided between the lower surface of the collar body and the roadway pavement, the resilient riser having a thickness so that the collar body and resilient riser together have a height substantially equal to the distance the roadway structure extends above the roadway pavement.

As admitted by the Examiner, Shaftner fails to disclose or suggest that the upper surface of the collar body is in substantially planar alignment with an upper surface of a roadway structure. Shaftner also fails to disclose a resilient riser provided between the lower surface of the collar body and the roadway pavement. Instead, the reference discloses that the ramp (collar) may have a variety of thicknesses or be stacked upon another ramp. Stacking ramps having sloped upper surfaces is not the same as providing a resilient riser below the lower surface of the collar body. Furthermore, such stacked ramps would be very awkward in use since their top surfaces are sloped.

Grosh also fails to disclose or suggest a resilient, replaceable collar having a body with upper and lower surfaces, an opening provided therethrough and sized to accommodate the outer periphery of the roadway structure, and the provision of a resilient riser. Furthermore, this reference teaches away from the claimed invention by disclosing that the top cap 25 is seated on

top of the body 15 (the roadway structure). That is, the central cylindrical opening 26 of top cap 25 does not surround the roadway structure, as recited in claim 1. Grosh further teaches away from the present invention by disclosing that the top cap 25 is made from a reinforced plastic mortar, and is secured to the upper portion of the body 15. Whereas, claim 1 recites a resilient, replaceable collar. Since Grosh teaches away from the present invention, it is not properly combinable with Shaftner. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1354 (Fed. Cir. 2001) (“references that teach away cannot serve to create a *prima facie* case of obviousness”).

Wiedrich also fails to disclose that the upper surface of the collar body is in substantially planar alignment with an upper surface of a roadway structure, and a resilient riser provided between the lower surface of the collar body and the roadway pavement. The reference is silent with regard to a collar. The riser (extension member 14) disclosed in Wiedrich is provided *below* support frame 18, which is provided well below the roadway pavement. In contrast, the riser recited in claim 1 is “provided between the lower surface of the collar body and an upper surface of the roadway pavement”. Thus, the extension member 14 (riser) of Wiedrich is completely different than the riser recited in claim 1.

In light of the above, Applicant submits that Shaftner, Grosh, and Wiedrich, whether taken alone or in any reasonable combination, fail to disclose or suggest the combination of elements recited in claims 1-7, 10, and 11, and that these claims are allowable over these references. Applicant, therefore respectfully requests that the Examiner reconsider and withdraw the Section 103(a) rejection of these claims.

In view of the foregoing amendments and remarks, Applicant respectfully requests the reconsideration of this application and the timely allowance of the pending claims.

If there are any other fees due in connection with the filing of this response, please charge

the fees to our Deposit Account No. 03-2775. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Dated: January 31, 2002

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EXHIBIT A ~~Amendments to the Claims of S.N. 09/549,002~~

IN THE CLAIMS:

Please amend claim 1, as follows:

1. (Twice Amended) A system for protecting a roadway structure from damage caused by vehicular traffic and vice versa, the roadway structure extending above a roadway pavement, the system comprising:

a resilient, replaceable collar having a body with upper and lower surfaces, an opening provided therethrough and sized to accommodate the outer periphery of the roadway structure, and sloped side walls extending downward from the upper surface of the body towards the lower surface of the body, wherein the upper surface of the body is in substantially planar alignment with an upper surface of the roadway structure; and

at least one resilient riser provided between the lower surface of the collar body and an upper surface of the roadway pavement, the resilient riser having a thickness so that the collar body and resilient riser together have a height substantially equal to the distance the roadway structure extends above the roadway pavement.